

MEMORANDUM

TO : Commissioners Tully and Koerner
FROM : Commissioner Manley
SUBJECT: Proposed Decision on M & G Convoy, Inc.

M+G Convoy, Inc.
Corp. Tax Dept.
1975

I disagree on the proposed decision in regard to the aforementioned taxpayer because I feel the facts set forth in the case do not substantiate the decision.

I believe the conclusion reached in the decision is faulty insofar as the facts and testimony are concerned because the issue seems to revolve around interstate commerce, ICC control and continuity from shipper to destination.

This is certainly a variance from prior interpretations of Section 184, as admitted in the Corporation Tax Bureau memo. They seem to be doubtful of such an interpretation by admitting that the decision, if upheld, will be appealed.

I don't believe this really resolves the matter. I believe the only way the matter can and should be resolved is by amending section 184 with more specific language, etc.

Accordingly, I dissent.


Commissioner

May 15, 1975

Attachment--file

DEPARTMENT OF TAXATION AND FINANCE

EDWARD ROOK

TCM

Commissioner Tully,

Please note that only Commissioner Manley has dissented. Commissioner Koerner does agree with the proposed decision and has signed it.

Ed

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of Petition
 of
M & G CONVOY, INC.
for refund of franchise taxes
under Section 184 of Article 9
of the tax law for the quarters
ended June 30, 1966 through
December 31, 1966, June 30, 1967,
and March 31, 1968 through June 30,
1973
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M & G Convoy, Inc. ("M & G"), a trucking company, having filed a petition for refund of franchise taxes under Section 184 of Article 9 of the tax law and a hearing having been held at the office of the State Tax Commission, State Campus, Albany, New York, at which hearing M. J. Petrina and J. R. Drew, officers of the Corporation, and H. Fein, Esq. and J. J. Geller, Esq. of Counsel, appeared and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) The taxpayer filed delinquent returns for the quarters listed below showing no tax due. Based on a field audit examination conducted by its Buffalo District Office, the Corporation Tax Bureau issued statements of audit adjustment and notices of deficiency dated May 15, 1974 for tax due as follows:

| <u>Quarter Ended</u> | <u>Taxable Receipts</u> | <u>Tax Due</u> |
|----------------------|-------------------------|----------------|
| 6/30/66 | \$200,390 | \$1,001.95 |
| 9/30/66 | 141,169 | 705.85 |
| 12/31/66 | 242,970 | 1,214.85 |
| 6/30/67 | 210,043 | 1,050.22 |
| 3/31/68 | 206,674 | 1,343.38 |

| <u>Quarter Ended</u> | <u>Taxable Receipts</u> | <u>Tax Due</u> |
|----------------------|-------------------------|----------------|
| 6/30/68 | \$338,064 | \$2,197.42 |
| 9/30/68 | 247,298 | 1,607.44 |
| 12/31/68 | 399,625 | 2,597.56 |
| 3/31/69 | 286,752 | 1,863.89 |
| 6/30/69 | 332,370 | 2,160.41 |
| 9/30/69 | 267,587 | 1,739.32 |
| 12/31/69 | 362,994 | 2,359.46 |
| 3/31/70 | 243,804 | 1,584.73 |
| 6/30/70 | 354,864 | 2,306.62 |
| 9/30/70 | 318,601 | 2,070.91 |
| 12/31/70 | 321,880 | 2,092.22 |
| 3/31/71 | 363,321 | 2,361.59 |
| 6/30/71 | 473,926 | 3,554.45 |
| 9/30/71 | 418,814 | 3,141.11 |
| 12/31/71 | 401,991 | 3,014.93 |
| 3/31/72 | 358,235 | 2,686.76 |
| 6/30/72 | 480,548 | 3,604.11 |
| 9/30/72 | 396,144 | 2,971.08 |
| 12/31/72 | 485,421 | 3,640.66 |

For the quarters ended 3/31/73 and 6/30/73 the taxpayer filed delinquent returns and paid taxes of \$82.08 and \$106.84 respectively. Based on the field audit, statements of audit adjustment and notices of deficiency dated May 15, 1974 were issued as follows:

| | <u>3/31/73</u> | <u>6/30/73</u> |
|------------------|----------------|----------------|
| Taxable receipts | \$532,555.00 | \$585,741.00 |
| Tax at .0075 | 3,994.16 | 4,393.06 |
| Tax reported | 82.08 | 106.84 |
| Added tax due | 3,912.08 | 4,286.22 |

The taxpayer submitted a remittance in the amount of \$74,761.37 in settlement of the foregoing, including interest and added charges, and filed a petition claiming a refund of \$71,394.69.

(2) The taxpayer is a New York corporation engaged in transporting automobiles and trucks to dealers in the Northeast area of the United States. Eleven terminals are in operation with three located in New York State at Buffalo, Selkirk and Voorheesville. The largest customer is the Chrysler Corporation ("Chrysler") with other deliveries of American Motors Jeep and several foreign cars,

mostly Volkswagon. Vehicles are brought into New York terminals mainly by rail, unloaded and placed in a bay area where the taxpayer reloads them on their convoys (5 or 6 vehicles to a convoy) and transports them to the dealer located in New York State or adjacent states, per instructions listing vehicle identification and dealer to whom assigned. The railroad bills and is paid by Chrysler. M & G bills and is paid by Chrysler for its convoy trucking charges. The Corporation Tax Bureau included as taxable receipts only those convoy movements of the taxpayer originating and terminating in New York State. Receipts from all other convoy movements were excluded as being derived from taxpayer's interstate business. The Corporation Tax Bureau also included as taxable receipts revenue derived from sale to others of gas, oil, repair services, etc.

The taxpayer is protesting inclusion of revenues from its convoy movements which originated and terminated within New York State. It is not protesting inclusion of revenues from sale of gas, oil, repair services, etc.

(3) Section 184.1 of the tax law reads in part:

"Every corporation . . . principally engaged . . . in . . . trucking . . . business . . . shall pay for the privilege of exercising its corporate franchise or carrying on its business in such corporate or organized capacity in this state, an excise tax or license fee which shall be equal to three-quarters of one per centum upon its gross earnings from all sources within this state, excluding earnings derived from business of an interstate character."

The State Tax Commission hereby

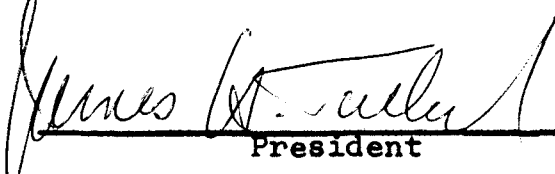
DECIDES:

(A) The convoy trucking movements of M & G which originated and terminated in New York are taxable under Section 184.1 since such receipts were derived from business conducted by the taxpayer entirely within New York. Convoy movements by M & G which involved other states are properly excludible since such receipts were derived from taxpayer's business of an interstate character.

(B) Taxpayer's petition for refund is denied.

Dated: Albany, New York
this 16th Day of July 1975.

STATE TAX COMMISSION



President

Commissioner



Commissioner